

Service Date: September 12, 1997

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the Investigation)	UTILITY DIVISION
of the Commission Implementation of a)	
Forward Looking Universal Service)	DOCKET NO. D97.9.167
Cost Model.)	
)	ORDER NO. 6015
)	

NOTICE OF INQUIRY AND PROCEDURAL ORDER

PLEASE TAKE NOTICE that the Montana Public Service Commission (PSC or Commission), in a scheduled work session held on September 3, 1997, voted 5-0 to initiate a proceeding to determine an appropriate cost model for universal service purposes. The Federal Communication Commission (FCC) asked states to decide, by August 15, 1997, whether they will conduct their own forward looking economic cost studies. The Commission notified the FCC by letter prior to August 15, 1997 that it intended to develop its own cost model rather than adopt the FCC's model.

The Commission initiates this proceeding to determine whether it ought to adopt a cost model for universal service purposes. The Commission hopes to elicit the necessary information to enable it to select a proxy cost model for estimating costs to provide the services that will be supported by the federal universal service fund.

The Commission has delegated to Commission staff the duty to set the procedural schedule and issue the Procedural Order for this proceeding. The Commission has established a firm schedule in this Procedural Order. The Commission staff may amend the procedural schedule when the amendment does not alter the scheduled hearing date. The Commission will reconsider the date set for hearing only upon good cause shown. The Commission has set aside a maximum of two days for the hearing.

Under the authority of ARM 38.2.2701-2702, this Procedural Order establishes the procedure to be followed in Docket No. D97.9.167. This Order is effective immediately and remains effective until modified by the Commission.

Background

In its May 7, 1997 Universal Service order, the FCC concluded that by January 1, 1999, the amount of universal service support that a non-rural

carrier (U S WEST in Montana) will receive should be calculated by subtracting a benchmark revenue amount from the forward-looking economic cost of constructing and operating the non-rural carrier's network to provide the supported services in the particular geographic area in which the carrier operates.

The FCC has concluded that the best means to determine these forward-looking costs is by using a "cost proxy model." Several models were submitted to the FCC in its universal service docket. The FCC concluded that none of these models were suitable for this purpose and that more review and revisions were necessary. The FCC intends to continue its review of the various costs models and ultimately may choose one as the basis of its cost calculations.

The FCC will use forward-looking economic cost studies conducted by state commissions which choose to submit such cost studies so long as the studies are consistent with the FCC's costing methodology. The FCC has stated that state-conducted cost studies have the advantage of permitting states to coordinate the basis for pricing unbundled network elements and determining universal service support, thus improving regulatory consistency and avoiding such marketplace distortions as unbundled network element cost calculations unequal to universal service cost calculations for the same elements that provide supported services. Such marketplace distortions have the potential to generate unintended and inefficient arbitrage opportunities.

States electing to conduct such studies must file them with the FCC on or before February 6, 1998. The FCC will then seek comment on the study and determine whether it meets the study criteria set forth in the FCC's May 7, 1997 Universal Service Order.

The FCC will accept a state commission's cost model for calculating federal universal service support if it is the same model that will be used to determine universal service support from a state universal service fund. The state commission's cost model must be done pursuant to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (to be codified as amended in scattered sections of 47 U.S.C.) Senate Bill 89, enacted by the 1997 Montana Legislature, allows the Commission to establish a state universal service fund pursuant to a determination of need. According to SB 89, for non-rural LEC's and rural LECs so choosing, costs for intrastate fund purposes must be calculated based on a cost proxy model adopted by the Commission. SB 89 includes proxy model guidelines that must be met.

The PSC notified the FCC that it planned to adopt a model for federal fund purposes. If the Montana PSC eventually decides not to adopt a universal

service cost model, or if the FCC does not accept the model submitted by the Commission, the FCC will use its own methodology for Montana support from the federal fund.

To reduce duplication and diminish arbitrage opportunities that might arise from inconsistencies between the cost methodologies for setting unbundled network element (UNE) prices and for determining universal service support, the FCC encourages that each state use its permanent UNE pricing proceeding--to the extent possible-- as a basis for its universal service cost study. The interconnection pricing criteria included in SB 89 may deviate too much from the FCC's costing criteria set forth in the universal service order to allow the same methodology to be used in Montana for both interconnection and universal service purposes. The Commission requests comments on this and any other relevant issues related to the adoption of a universal service cost model by September 30, 1997. Parties are encouraged to submit comments that will assist in identification of issues that need to be addressed in this Docket.

The Commission staff will hold a technical conference on September 23, 1997 to discuss how this docket should proceed in order to complete it in time to submit a cost model to the FCC in February 1998. Topics that will be discussed at this conference will include the need for workshops and additional technical conferences, how to expedite the discovery process, and how this docket relates to other pending matters before the Commission.

ORDER

Intervention and Participation

1. In this Order the term "parties" includes the Applicant, U S WEST, and all intervenors. Individuals or entities are not parties unless they have been granted intervention.

2. The deadline for filing Petitions to Intervene is September 22, 1997. Petitions to Intervene filed after that date must comply with ARM 38.2.2401 through 38.2.2406.

Service and Filing

3. Copies of all pleadings, motions, discovery requests and responses, prefiled testimony, briefs and all other documents shall be filed with the Commission and served on all parties and other entities and individuals on the service list in this Docket. Service upon the parties shall be upon the parties' attorney of record and such other individuals as may be reasonably designated by the attorney of record. The parties may limit service of discovery responses to service on the party making the discovery request, the Commission, and parties specifically requesting service of discovery responses.

4. Filing by means of telephonic facsimile will not suffice for timely filing. Filing and service deadlines are the dates set for filing of the requisite number of paper copies in the offices of the Commission.

5. An original and seven (7) copies of all discovery must be filed with the Commission, and an original and eleven (11) copies of all other documents, except proprietary documents. Only one copy of proprietary documents shall be filed -- on yellow paper. The Commission or its staff may designate different forms of service for some parties on the service list as appropriate, at a later date (e.g., overnight mail, cover letter only, etc.).

Schedule

6. The deadlines for service and filing of documents in this Docket (pursuant to the above requirements) and other pertinent dates, shall be those dates contained in Attachment "A" which is attached hereto and incorporated herein by this reference.

Discovery

7. The term "discovery" includes all forms of discovery authorized by the Montana Rules of Civil Procedure, as well as "data requests" (informal interrogatories).

8. The Commission directs all parties to prepare data requests according to the following guidelines:

(a) Parties must assign their data requests a request number (e.g., MDU-001).

Request numbers must be consecutive regardless of the party to whom the request is directed (e.g., the PSC might direct PSC-001 through 008 to MDU, PSC-009 through 016 to MCC, and PSC-017 through 019 to MDU).

(b) All data requests must include at the beginning of each request a description of five words or less explaining the subject of the data request. Other identifying information, such as the witness to whom the request is submitted, exhibit number, page number, etc., may be included in addition to, but not in lieu of, the subject of the request. This requirement will help to identify all data requests and responses addressing a particular subject or group of subjects. Subject descriptions will obviously vary from one party to another. However, each party should attempt to keep descriptions consistent from one request to another.

(c) Multi-part requests may be used, each part denoted by a lower case letter (a, b, c, d and e). Requests must be limited to five parts (a-e). If additional parts are necessary, additional requests must be made. A single part request should be denoted by the request number only.

(d) Examples of acceptable data requests are as follows:

PSC-500 RE: Purchased Gas Contracts
Witness - Burke, Page JBB-4, Lines 13-15.

Please provide the origination and expiration date for each contract.

PSC-501 RE: Bypass
Witness - Johnson, Page DAJ-14, Lines 11-14.

- a. What risks of bypass would be avoided by the shareholders as a result of the Company's proposed treatment?
- b. What risks of bypass would be avoided by the ratepayers as a result of the Company's proposed treatment?

9. The party receiving the written discovery or data request has five business days from receipt to file any objections it has to the request(s). Notice of the objection shall be served upon the Commission and all parties (as provided in the paragraph above). The Commission may dispose of such objections by prompt ruling or may schedule argument. Failure to timely object will be a waiver of objections.

10. Any requesting party dissatisfied with the response to any written discovery or data request and desiring PSC action to compel, must serve its written objection(s) within five business days after receipt of such response (as provided in the paragraph above). The Commission may dispose of such objection(s) by prompt ruling, or may schedule argument. The Commission will act either to sustain or overrule the objection(s), and if sustaining, set a deadline for a satisfactory response.

11. Parties are encouraged to attempt to resolve all discovery disputes between themselves, before filing objections. All motions regarding discovery should contain a statement explaining the efforts taken to resolve the issue informally, and a photocopy or restatement of the requests and responses. Discovery motions which do not include a statement explaining the efforts taken to resolve the issue informally are subject to denial without substantive consideration of the merits.

12. Submission of written discovery after the deadline established will be allowed by leave of the PSC only. The PSC will not grant requests without a showing of good cause explaining why the request was not submitted within the time period allowed.

13. Unless excused by the PSC, failure by a party to answer data requests or other discovery from any party may result in: (a) action refusing to allow the failing party to support or oppose related claims; (b) action prohibiting

introduction of related matters in evidence; (c) action striking pleadings, testimony or parts thereof; (d) action staying further proceedings until the request is satisfied; or (e) action dismissing the case, defense, proceeding or parts thereof.

14. Unless otherwise provided by this Order, PSC Rules or other PSC action, discovery procedures and requirements shall be governed by the applicable Montana Rules of Civil Procedure. See ARM 38.2.3301 through 38.2.3305.

Testimony and Evidence

15. The PSC contemplates a complete identification of issues before the hearing. The PSC will not permit introduction of new issues or data in new areas at the time of hearing.

16. At hearing, the PSC will admit into the record all prefiled direct, answer and rebuttal testimony upon motion of the proponent, without the necessity of the witness reading the testimony into the record. This testimony will be an exhibit and not otherwise entered into the transcript.

17. All proposed exhibits and prefiled written testimony shall be marked for the purpose of identification prior to the start of the hearing. Parties shall arrange in advance with the court reporter or at a prehearing conference, for the preferred manner of identifying exhibits.

18. When cross-examination is based on a document not previously filed with the Commission, copies of the document will be made available to the Commissioners, parties, and staff, unless good cause is shown why copies are not available. Parties introducing data requests or other discovery must have copies of each request and response available at the hearing for the court reporter, each Commissioner, the PSC staff, and all parties. This last requirement may be waived if the documents to be introduced are bulky, or for other good cause, and if previous arrangements have been made with the PSC and all parties.

19. Parties may be permitted to present live rebuttal testimony only by leave of the PSC or presiding officer.

20. The Montana Rules of Evidence in effect at the time of the hearing will apply.

21. Any party to this proceeding responding to written discovery from any other party or the Commission shall have each person authorizing any response(s) present and available as a witness at the hearing to introduce the response(s) and be available for cross-examination. Parties may waive objection(s) to introduction absent the author, and the right to cross-examine. Upon

PSC approval of such parties' agreement to waiver, the person responding to data requests need not be present to testify and the responses may be introduced into the record. Written discovery and data responses will be introduced at hearing only pursuant to applicable rules of evidence and through an appropriate witness subject to cross-examination, or upon stipulation approved by the PSC (except, see Rule 32, M.R.Civ.P. regarding admission of depositions).

Prehearing Motions and Conferences

22. Motions by any party, including motions to strike prefiled testimony and motions concerning any procedural matter connected with this Docket shall be raised at the earliest possible time. Prehearing motions shall be submitted on briefs, without oral argument, unless otherwise requested by a party and approved by the PSC. All parties are strongly encouraged to attempt to resolve procedural disputes informally.

23. The PSC may set prehearing conferences to discuss settlement of any issues in the proceeding, simplification of issues, possibility of obtaining admissions of fact and documents, distribution and marking of written testimony and exhibits prior to the hearing, and other procedural matters as may aid in the disposition of the proceeding.

24. Nothing in this order shall be construed to limit the legally established right of the PSC or its staff to inspect the books and accounts of U S WEST and other regulated utilities at any time.

Prehearing Memoranda

25. Each party and the Commission staff will serve a prehearing memorandum on the Commission and all formal parties in this Docket on or before January 5, 1997, containing the following information:

a. Each and every Data Response and all other exhibits that it intends to offer into evidence at the hearing;

b. The name of the witness responsible for the Data Response or through which the exhibit will be offered; and

c. The issue to which the Data Response or document is relevant.

In addition, all parties (but not the Commission staff) are required to include the following in their prehearing memoranda:

d. A list of all issues, contested and uncontested;

e. Witnesses the party will call to testify;

f. A proposed order of witnesses (including whether each witness would simultaneously offer both direct and rebuttal testimony);

g. A proposed order of cross-examination; and

h. Identification and explanation of any special scheduling or witness sequence needs which a party requests to accommodate scheduling conflicts.

Amendment

26. The provisions of this Order may only be amended by PSC action or PSC staff action pursuant to delegated authority. The PSC shall maintain continuing jurisdiction of the matters encompassed by this Order during the course of this Docket.

DONE AND DATED this 11th day of September, 1997 by delegation to Commission staff as the Order of the Montana Public Service Commission.

BY THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTACHMENT "A"

Procedural Schedule
Docket No. D97.9.167, Order No. 6015

Deadline	Action
September 22, 1997	Intervention deadline.
September 23, 1997	Technical Conference.
October 3, 1997 Order	Comments on issues identified in this Notice and due.
October 9, 1997	Scheduling Conference (tentative).
January 5, 1998	Prehearing Memoranda due.
January 8, 1998	Hearing to Commence in Docket No. D97.9.167.